

FAMILIES FIRST CORONAVIRUS RESPONSE ACT: A BULLET POINT LIST FOR EMPLOYERS

TIMETABLE

- Signed into law on Wednesday, March 18, 2020
- Effective no more than 15 days from enactment--April 2, 2020
- Expires on December 31, 2020
- Department of Labor to issue guidance on implementation

NEW FMLA LEAVE ENTITLEMENTS

- Eligible Employee: one who has been employed by current employer for at least 30 days
- Covered Employers: those with fewer than 500 employees for each working day of 20 or more calendar workweeks in the current or preceding calendar year
- Permitted Leave: Leave must be granted to an employee to care for his/her child under 18 years of age in any area in which schools have closed, or for whom a childcare provider is unavailable, due to the coronavirus outbreak.
- Hardship provisions to be determined: DOL will have authority to exempt small businesses with fewer than 50 employees from the requirement when imposition of the responsibilities imposed by statute would "jeopardize the viability of the business as a going concern"
- Unpaid leave: First 10 days are unpaid leave unless ability to use PTO at request of employee
- Paid Leave: Beginning on the 11th day Employers must pay at least 2/3 of the employee's regular rate of pay under the FLSA multiplied by the employee's normal working hours. Pay for employees with variable hours is calculated by taking an average of pay over the prior six months.
- Maximum Payments: Pay maxes out at \$200 per day and \$10,000 aggregate for COVID-19 FMLA payments
- Employer Recoupment: Employers may recoup up to \$200 per employee per day, capped at \$10,000 for the entire period of COVID-19 FMLA Leave, by taking a tax credit against employment taxes.
- Public Employers: Governmental employers are not eligible for the tax credit.
- First Responders: May be excluded.
- Reinstatement: Employers with 25 or more employees would be required to reinstate employees after their FMLA leave period ends. Employers with fewer than 25 employers do not have to reinstate an employee to the position held by the employee when leave taken if the position does not exist due to economic conditions or changes in operating conditions of employer caused by COVID-19
- Period of Leave: Up to 12 weeks or until qualifying reason for need resolves

EMERGENCY PAID SICK LEAVE

- Covered Employers: : those with fewer than 500 employees for each working day of 20 or more calendar workweeks in the current or preceding calendar year
- Permitted Sick Leave: (a) the employee is in federal, state or local quarantine or isolation, (b) a health care provider has advised the employee to self-quarantine, (c) the employee is caring for an individual described above, (d) the employee is experience symptoms of COVID-19 and is

seeking a medical diagnosis, (e) the employee is caring for his or her child if the child's school or child care facility has closed due to COVID-19, or (f) the employee is experiencing another, substantially-similar condition designated by the Secretary of Health and Human Services.

- Duration of Paid Leave: Full-time employees - 80 hours ; Part-time workers are entitled to payment for the number of hours that the employee works on average during a two-week period. For employees with a varying schedule, an average over the prior six months should be used.
- Rates of Pay: Employees who are on leave due to a quarantine or isolation order, a self-quarantine recommendation, or experiencing symptoms and seeking a medical diagnosis must be paid for hours at the greater of (a) their regular rate of pay, or (b) the federal minimum wage for the locality, if higher, subject to the limitations on tax credits set forth below. Employees who take leave to care for a family member are required to be paid 2/3 of the rate described above.
- Maximum Payments: Employees who are on leave due to a quarantine or isolation order, a self-quarantine recommendation, or experiencing symptoms and seeking a medical diagnosis may be paid up to \$511 per day and \$5,110 aggregate. The maximum payment for all other Paid COVID-19 Sick Leave is \$200 per day or \$2,000 in aggregate.
- Hardship provisions to be determined: DOL will have authority to exempt small businesses with fewer than 50 employees from the requirement when imposition of the responsibilities imposed by statute would "jeopardize the viability of the business as a going concern"
- Employer Recoupment: Amounts paid by an employer for Paid COVID-19 Sick Leave are also eligible for recoupment as a tax credit against the employer's payroll taxes. The daily limits on recoverable pay are different and are based on the reason for the employee's leave.
- Relationship to other leave: Employer may not require an employee to use other paid leave before employee uses new paid leave.
- Public Employers: Governmental employers are not eligible for the tax credit.
- Collective Bargaining: For employers and employees who operate under a collective bargaining agreement which provides for payment to a sick fund from which the employee may draw a benefit, said provision satisfies the required sick leave.

SELF EMPLOYED INDIVIDUALS

Self-employed individuals are eligible for a tax credit in the same amounts as employees employed by employers for qualified leave under the Act. Tax professionals should be consulted.

NEW GROUP HEALTH PLAN COVERAGE REQUIREMENTS

- FDA authorized COVID-19 testing at no cost-sharing and with no medical management requirements, such as prior authorizations.
- The testing must be provided without application of any deductible, co-insurance, or co-pay.
- The coverage must also include items that result in an order for COVID-19 testing.